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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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11 NO GREY SKY, INC., et al., ) Case No. CR 12-09261 SJO (FFMx)  
12 Plaintiffs, )  
13 v. ) **ORDER DENYING DEFENDANT'S MOTION**  
14 UNITED STATES DEPARTMENT OF ) **TO DISQUALIFY JUDGE OTERO**  
15 JUSTICE, et al., )  
16 Defendants. ) [Dkt. No. 6. Referral to DDP at  
17 ) Dkt. No. 8]  
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This matter comes before the court on Alex Lazar's Affidaiat of Prejudice under 28 U.S.C. § 144, which this court interprets as a motion to disqualify Judge Otero. Having reviewed Lazar's submission, the court DENIES the motion and adopts the following order.<sup>1</sup>

28 U.S.C. § 144 is substantively the same as 28 U.S.C. § 455. United States v. Hernandez, 109 F.3d 1450, 1453 (9th Cir. 1997). As the Ninth Circuit has explained:

<sup>1</sup> It is unclear to this court whether Lazar has standing to file the instant motion. Lazar's affidavit appears to be filed in an individual capacity, though the affidavit also states that Lazar is the "owner of operation of No Grey Sky Inc., a Plaintiff . . . ." (Affidavit ¶ 2.) The only plaintiff referenced in the complaint is No Grey Sky, Inc. (Complaint ¶ 1.)

1 The test under § 455(a) is whether a reasonable person with  
2 knowledge of all the facts would conclude that the judge's  
3 impartiality might reasonably be questioned. Typically, a  
4 judge's partiality must be shown to be based on information  
5 from extrajudicial sources, although sometimes, albeit  
6 rarely, predispositions developed during the course of a  
trial will suffice. In the instance where the partiality  
develops during the course of the proceedings, it can be the  
basis of recusal only when the judge displays a deep-seated  
and unequivocal antagonism that would render fair judgment  
impossible.

7 F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc., 244 F.3d  
8 1128, 1144-45 (9th Cir. 2001) (internal quotations and citations  
9 omitted).

10 Lazar asserts that Judge Otero is biased against him by dint  
11 of Judge Otero's prior service (1) on the board of a community  
12 organization and (2) as a judge of the Los Angeles County Superior  
13 Court, as well as by executive policies in place at the time of  
14 Judge Otero's appointment to the federal bench. (Mot. ¶¶ 3-4.)  
15 No reasonable person could conclude from these assertions that  
16 Judge Otero bears a "deep-seated and unequivocal antagonism" toward  
17 Plaintiff "that would render fair judgment impossible." F.J.  
18 Hanshaw Enters., 244 F.3d at 1144-45. Accordingly, the Motion for  
19 Disqualification is DENIED.

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23 IT IS SO ORDERED.

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25 Dated: November 26, 2012

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DEAN D. PREGERSON  
United States District Judge